IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 28TH SEPTEMBER 2006 / 6TH ASWINA 1928

OP.No. 37583 of 2002(Y)

PETITIONER:

THE PATHANAPURAM SERVICE CO-OPERATIVE BANK LTD. NO.3656, REPRESENTED BY ITS SECRETARY, G.GOPALAKRISHNA PILLAI, PATHANAPURAM P.O., KOLLAM DISTRICT-689 695.

BY ADV. SRI.B.GOPAKUMAR

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, KOLLAM.

2. TAHSILDAR, PATHANAPURAM.

BY GOVERNMENT PLEADER SRI.P.SALIM

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.37583/2002

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE REGD. SECURITY BOND DATED 27.02.2001.

EXHIBIT P2: TRUE COPY OF THE REGD. SECURITY BOND DATED 27.02.2001

EXHIBIT P3: TRUE COPY OF THE AGREEMENT DATED 27.02.2001 EXECUTED BY THE PETITIONER.

EXHIBIT P4: TRUE COPY OF THE BOND DATED 02.03.2001.

EXHIBIT P5: TRUE COPY OF THE BOND DATED 13.03.2001.

EXHIBIT P6: TRUE COPY OF THE NOTICE FORM NO.16 DATED 18.11.2002 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P7: TRUE COPY OF CLAIM PETITION SUBMITTED BY THE PETITIONER DATED 14.11.2002.

EXHIBIT P8: TRUE COPY OF TAX RECEIPT NO.23 DATED 19.02.2001.

EXHIBIT P9: TRUE COPY OF THE TAX RECEIPT NO.25 DATED 19.02.2001.

EXHIBIT P10: TRUE COPY OF THE TAX RECEIPT NO.26 DATED 19.02.2001.

//TRUE COPY//

OP NO.37583/2002

ORDER IN C.M.P.NO.63483/2002 IN O.P.NO.37583/2002

DISMISSED

28.09.2006 **Sd/-**
C.N.RAMACHANDRAN NAIR, JUDGE

C.N.RAMACHANDRAN NAIR, J.

O.P. NO. 37583 OF 2002

Dated this the 28th day of September, 2006

J U D G M E N T

The issue that is, priority of claim of the petitioner-Bank over Government dues is apparently covered against the petitioner by decision in **State of Kerala v. Rajmohan Cashew (P) Ltd. (2005 (2) KLT 131)**. Recovery proceedings were initiated in this case by the first respondent for recovery of abkari dues and arrears of Toddy Workers Welfare Fund contribution. This court in another decision reported in **South Indian Bank v. State of Kerala (2006 (1) KLT 65)** held that even prior mortgage does not affect Government's right to recover tax arrears. Further, Supreme Court in **State of Madhya Pradesh and another vs. State Bank of Indore and others (2002) 10 KTR 366 SC)** upheld the priority of State to recover arrears over bank dues following earlier decision in Dena Bank's case. Therefore, there is no need for this court to decide the matter again more because petitioner's claim is still pending before the Tahsildar. OP is disposed of directing the Tahsildar to go through the statutory provisions and decisions above referred and dispose

of petitioner's claim petition within a period of two months from now and thereafter if Government is seen to have priority, to sell the property and recover the arrears. In that case also, balance should be paid to the petitioner.

O.P is disposed of as above.

C.N.RAMACHANDRAN NAIR,
JUDGE

Rp